# UNITED STATES OF AMERICA
## BEFORE THE NATIONAL LABOR RELATIONS BOARD
## REGION 10

**SFOG ACQUISITION COMPANY, LLC**
**d/b/a SIX FLAGS/ WHITE WATER**
**& AMERICAN ADVENTURES**

**EMPLOYER**[1]

**and** **CASE 10-RC-15155**

**SOUTHEASTERN CARPENTERS**
**REGIONAL COUNCIL**

**PETITIONER**

## DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to the undersigned.

Upon the entire record in this case, the undersigned finds:[2]

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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[1] The caption may not contain the correct legal name of the Employer. In its brief dated August 25, 2000, the Employer requested, inter alia, that the record in this matter be reopened "in order to ascertain the correct name of the employer . . ." In granting the Employer's request, the undersigned issued an Order Remanding Case and Notice of Hearing dated September 12, 2000, ordering that the record be reopened to resolve certain issues raised by the petition, including the determination of the "correct legal name of the Employer." The Employer failed to attend the remand hearing on September 20, 2000, and evidence as to the correct legal name of the Employer is peculiarly within the knowledge of the Employer. Despite the Employer's failure to appear, it is apparent from a reading of the Petitioner's brief and Petitioner's Exhibit 2 that the proper name of Employer is as indicated.

[2] The Employer and Petitioner filed briefs and supplemental briefs, both of which were duly considered. Subsequent to the close of the August 14, 2000 hearing, the Employer moved to strike the Petitioner's brief as untimely, because said brief was not received by the Employer until September 1, 2000, four days after the brief was due and received by the Region. Pursuant to Section 102.67(a) of the Board's Rules and Regulations, the Employer's motion to strike is hereby denied.

2. The Employer is a Delaware limited liability corporation with an office and place of business located in Marietta, Georgia, where it is engaged in the operation of an amusement/water park.[3] The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act[4] and claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. There is no history of collective bargaining at the Marietta, Georgia location[5].

6. The Petitioner seeks to represent the Employer's employees in the unit described below:

> All full time and regular part time maintenance employees employed by the Employer at its Whitewater and American Adventures Marietta, Georgia amusement parks, but excluding all office clerical employees, guards and supervisors as defined in the Act.

In seeking to represent maintenance employees at the Whitewater/American Adventures parks, the Petitioner contends, based on the record, that a unit consisting solely of maintenance employees is presumptively appropriate. The proposed unit consists of approximately eleven (11) maintenance employees including two full-time and nine regular part time employees. While not entirely clear from the record and the post- hearing briefs, it appears that the Employer does not concede the appropriateness of a separate unit limited solely to maintenance employees. Should such a unit be found to be appropriate, the Employer asserts that a unit consisting of both full time and "seasonal"[6] maintenance employees is not appropriate because the "seasonal" employees do not share a sufficient community of interest with the full time maintenance employees. Thus, the Employer argues that the "seasonal maintenance employees have

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[3] The water park is identified as "Whitewater", while the amusement park is locally known as "American Adventures". The parks are contiguous.

[4] In its supplemental brief, the Employer attempted to withdraw from the previously obtained stipulation as to Petitioner's status as a labor organization. Regardless, the record clearly establishes that the Petitioner is an organization in which employees participate, and which exists in substantial part for the purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

[5] At hearing, the Petitioner noted that Carpenters Local 225 and the Employer are parties to a collective bargaining agreement covering certain maintenance employees at the Employer's Austell, Georgia amusement park, known as Six Flags Over Georgia or herein called Six Flags.

different benefits, policies, schedules, etc. than the full-time maintenance employees and share a greater community of interest with other seasonal [employees] at the Park." In addition to its position on the inappropriateness of a maintenance unit, the Employer contends that the "seasonal" maintenance employees do not have a reasonable expectation of recall and therefore should not be included in any unit found appropriate. Finally, the Employer submits that should the undersigned find that the "seasonal" maintenance employees have a reasonable expectation of recall, then an election could not be held earlier than June of 2001, the Employer's next peak operating season.

The Petitioned-For Maintenance Unit:

The Employer operates two amusement parks at its Marietta, Georgia location. Whitewater is a theme water park, featuring water rides and wave pools. The water park operates from May 6 through Memorial Day on a weekends-only schedule, and thereafter opens seven days a week until August 13. After August 13, Whitewater operates on a weekend schedule until the facility closes on September 4. The American Adventures park operates year round on weekends with hours by appointment with churches, schools, and other groups during the week. Both facilities are apparently owned and operated by a holding company identified in the employee handbook as Premier Parks, Inc., of which Six Flags Over Georgia is a subsidiary.

The Employer hires maintenance employees in the petitioned-for unit at its Austell, Georgia location (Six Flags) or through its personnel office in Marietta, Georgia. The Whitewater/American Adventures human resources manager reports directly to Six Flags Human Resources Manager Debbie McGraw. While McGraw's primary office is located at the Six Flags facility in Austell, Georgia, she often travels to the Employer's Marietta, Georgia parks. The record reflects that maintenance employees identified by the Employer as "seasonal" employees have been hired at both the Austell and Marietta facilities and have completed both full-time and "seasonal" job applications.

The maintenance employees at the Marietta parks are directed by two on-site supervisors[7] who in turn report to Director of Maintenance Ron Ebert. The maintenance employees receive their work schedules from a common posted list prepared by the supervisors. Both full-time and "seasonal"

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6 The Employer classifies any maintenance employee who is not regular full-time as "seasonal."

7 The parties stipulated, and on the record I find, that Supervisors Barry Puckett and Andy Wilson are supervisors within the meaning of Section 2(11) of the Act.

maintenance workers are dispatched by radio to perform maintenance work in both the Whitewater and American Adventures parks. All maintenance employees, both full-time and "seasonal," perform routine maintenance functions such as carpentry work, roof and fiberglass repair, wiring, plumbing, ride repair and maintenance, and concrete work. The Whitewater park employs four maintenance employees (2 full-time and 2 "seasonal") who are certified pool operators (CPO). The CPO's receive specialized training and obtain a certificate mandated by state law. These maintenance employees are primarily responsible for rectifying any chemical problems identified during water testing.

In April of 2000, the maintenance department was reorganized into a separate department with its own budget. The record evidence reflects that the maintenance employees have a separate and distinct line of supervision from other park employees. In addition, there is no interchange among maintenance employees and employees in other job classifications at the parks. Thus, all maintenance work is performed by full-time or "seasonal" maintenance employees without assistance by other park personnel.

The Board will direct an election in a maintenance department unit when no bargaining history on a broader basis exists, and the maintenance employees are readily identifiable as a group whose similarity of functions and skills create a community of interest such as would warrant separate representation. In examining whether a sufficient community of interest exists among maintenance employees to warrant a separate unit, the Board considers such factors as mutuality of interests in wages, hours, and other working conditions; commonality of supervision; degree of skill and common functions; frequency of contact and interchange with other employees; and functional integration. Ore-Ida Foods, Inc., 313 NLRB 1016 (1994). Based upon the foregoing, I find that the Employer's maintenance employees at its Whitewater and American Adventures parks constitute a distinct, separate and cohesive group of employees appropriate for collective bargaining purposes. However, it must be determined whether those employees identified by the Employer as "seasonal" share a sufficient community of interest with

the full-time maintenance employees to warrant their inclusion in the unit found appropriate herein.

The Status of the Seasonal Maintenance Employees:

The Employer submits that, in the event a separate maintenance unit is found appropriate, the unit should not include the "seasonal" maintenance employees because they do not have a "reasonable expectation of re-employment." The Employer further asserts that if the "seasonal" employees do have a reasonable expectation of recall, they should nevertheless be excluded from a unit of full-time maintenance employees because they do not share a sufficient community of interest with the full-time maintenance employees.

The Employer's evidence in support of its position on the recall issue rests primarily on the testimony of Director of Maintenance Ron Ebert.[8] Ebert testified that the "seasonal" maintenance employees do not, or at least should not, have any expectation of working beyond September 4, 2000 at the Whitewater Park. Ebert further testified that the Employer's budget "shows seasonal scheduled and budgeted through the end of October and there will be no seasonals [in] November and December."

Ebert's testimony conflicts with testimony of employee witnesses. The unrebutted testimony of approximately ten out of the eleven maintenance employees in the requested bargaining unit supports a finding that both full-time and "seasonal" maintenance employees work a year round schedule. For example, maintenance employee Jim Thompson testified that "seasonal" workers are not laid off at the end of

[8] The testimony of Human Resources Manager Debbie McGraw on this issue was of little or no probative value as her testimony related to all seasonal employees employed by the Employer, and was not limited specifically to the practice and experience of the maintenance department.

the season but continue to work, and that maintenance work is performed year round by both full-time and "seasonal"/part-time employees. Maintenance employee Charles Carnes testified that Ebert informed him that he would continue working year round even after Carnes' status changed from full-time to "seasonal" in April of 2000.[9] Carnes further testified that he averages "anywhere from forty to sixty" hours a week. "Seasonal" employee Tommy King was told by supervisors Puckett and Wilson that the maintenance job was a "full-time year round job" and that King would "work more in the winter time than . . . when the park's open." Full-time maintenance employee Kenneth Kemp testified that within the last two months supervisor Andy Wilson told him that the Employer intended to work the "seasonal" maintenance employees year round.

The foregoing testimony is consistent with the general experience and testimony of all maintenance employees employed by the Employer at the Whitewater/American Adventures parks. Given the uncontradicted employee testimony, coupled with the speculative nature of Manager Ebert's testimony regarding any impending lay-off, I find that those maintenance employees classified as "seasonal" are, in fact, more akin to regular part-time employees. Accordingly, I shall include the "seasonal"/regular part-time maintenance employees in the unit.

The record evidence also does not support the Employer's assertion that the "seasonal" maintenance employees do not share a community of interest with the full-time maintenance employees.[10]. As previously noted, all maintenance employees

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[9] Significantly, Carnes' rate of pay, line of supervision, and job duties remained the same after his change in status.

[10] Although the Employers "seasonal" maintenance employees are not entitled to participate in the various fringe benefit programs provided to its full-time maintenance employees, such disparity does not, by itself, support excluding the "seasonal" maintenance employees from the unit. Western Temporary Services, 278 NLRB 469 (1986), enfd. 821 F.2d 1258 (7th Cir. 1987); Quigley Industries, Inc., 180 NLRB 486 (1969).

perform essentially the same work. All maintenance employees transfer between Whitewater and American Adventures to cover maintenance work on an "as needed" basis and are cross-trained in various maintenance functions. Both classifications work off the same posted schedule, share common supervision and work approximately the same number of hours. There is no meaningful distinction between the type and location of work, work schedules, or hours of work between full-time and "seasonal"/regular part-time maintenance employees. The record establishes that the "seasonal"/regular part-time maintenance employees share a substantial community of interest with those maintenance employees classified as full-time, and are therefore appropriately included in the unit.[11]

Accordingly, based upon the record evidence, I find that the following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

> All full time and regular part time (seasonal) maintenance employees employed by the Employer at its Whitewater and American Adventures Marietta, Georgia amusement parks, but excluding all office clerical employees, guards and supervisors as defined in the Act.

## DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time set forth in the notice of election to issue subsequently, subject to the Board's Rules and Regulations.[12] Eligible to vote are

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[11] Assuming arguendo, that the seasonal maintenance employees were not found to be regular part time employees, I find, given the testimony of the maintenance employees, that said seasonal employees have a reasonable expectation of recall after the end of the season and thus would be appropriately included in the bargaining unit

[12] Your attention is directed to Section 103.20 of the Board's Rules and Regulations, a copy of which is enclosed. Section 103.20 provides that the Employer must post the Board's official Notice of Election at least three full working days before the election, excluding Saturdays and Sundays, and that its failure to do

those in the unit who are employed during the payroll period ending immediately preceding the date of the Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained the status as such during the eligibility period and their replacements. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether they desire to be represented for collective bargaining purposes by Southeastern Carpenters Regional Council.

## LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. Excelsior Underwear, 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Co., 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the full names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 10 within 7 days of the date of this Decision and Direction of Election. North Macon Health Care Facility, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. This list may initially be used by me to assist in determining an adequate showing of interest. I shall, in turn, make the list available to all parties to the election

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so shall be grounds for setting aside the election whenever proper and timely objections are filed.

only after I shall have determined that an adequate showing of interest among the employees in the unit found appropriate has been established. In order to be timely filed, such list must be received in the Regional Office, Harris Tower – Suite 1000, 233 Peachtree St. N.E., Atlanta, Georgia, 30303-1531, on or before November 8, 2000. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

## RIGHT TO REQUEST REVIEW

Under provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 - 14th Street, NW, Washington, DC 20570. This request for review must be received by the Board in Washington by November 15, 2000.

Dated at Atlanta, Georgia, this 1st day of November, 2000.

/s/ Martin M. Arlook
Martin M. Arlook, Regional Director
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